U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: AUG 21 2007

EAC 05 108 53158

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a psychology research assistant. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner reasserts her claim that she is eligible for the classification sought and submits a letter from her nonimmigrant visa sponsor.

On March 13, 2007, this office advised the petitioner of derogatory evidence discovered in the adjudication of her appeal and requested original documents pursuant to the regulation at 8 C.F.R. § 103.2(b)(5). The petitioner was afforded 12 weeks in which to respond. As of this date, more than 12 weeks later, this office has received no response. As the petitioner has been advised of the derogatory evidence and afforded an opportunity to address that evidence, such evidence may be used in our evaluation of the merits of the appeal.

More specifically, an application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). As the petitioner failed to respond to our notice, she has not resolved the inconsistencies raised in our notice. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. --

> (A) In general. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
>
> (B) Waiver of job offer.
>
> > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner submitted what purports to be her Master's degree in Development and Education Psychology from Inner Mongolia Normal University issued July 7, 2000. The petitioner's alleged occupation falls within the pertinent regulatory definition of a profession. Thus, the director concluded that the petitioner qualifies as a member of the professions holding an advanced degree. As discussed in our March 13, 2007 notice and reiterated below, however, at least three of the articles the petitioner claims to have authored were, in fact, authored by other individuals. Moreover, the petitioner was not in the United States during the conferences where she claimed to have presented her work. As stated above, doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591. Given the questionable nature of the other documentation submitted, we do not find the petitioner's purported degree to be credible. Thus, the petitioner has not established her eligibility as an advanced degree professional.

The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus an alien employment certification, is in the national interest. Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of the phrase, "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states, in pertinent part:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest

> with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215, 217-18 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

In support of the petition, the petitioner submitted (1) professional membership certificates, including one from the petitioner's nonimmigrant visa sponsor stating that the petitioner is in good standing "with all honors and privileges containad [sic] therein," (2) 15 articles purportedly authored by the petitioner, (3) 10 conference abstracts, including for the 7th and 8th "annual" conferences of the Inner Mongolia Autonomous Region Psychology Association in 1998 and 2000 and three conferences in the United States, (4) a "Certifcae" issued by the petitioner's nonimmigrant sponsor purporting to confirm participation at one conference and (5) 10 alleged awards, many of which bear wet "seals" that are covered by the preprinted text of the award certificates.

On March 13, 2007, this office advised the petitioner of the following derogatory information gained through Internet research, the specifics of which were stated in our notice, which is hereby incorporated into this decision. Briefly, the article the petitioner claims to have authored, published in the April 2004 Volume 1, Number 2 issue of the *International Chinese Application Psychology Journal* is actually authored by someone else. Second, the petitioner's alleged 2004 article actually appeared in a different journal in 2001, authored by someone else. Third, the abstract for the petitioner's alleged conference presentation at the 6th International Congress on Chinese Medical Specialists and Psychologists was actually authored by another individual; although the number of subjects was altered, the remaining text is identical. Finally, the petitioner claims to have presented her work at conferences in the United States in December 2001, December 2002 and November 2003. The petitioner's passport, however, while issued in October 2001, does not show entries in the United States during those times. Moreover, Citizenship and Immigration Services electronic records reflect only an entry and departure in November 2000 and an entry in December 2003.

The petitioner was offered an opportunity to provide the original articles and evidence of additional entries into the United States and otherwise rebut the above derogatory evidence. She failed to do so. The submission of documentation discovered to be fraudulent seriously diminishes the credibility of the remaining documentation. Moreover, it is not in the national interest to waive the labor certification process for an alien who has seriously misrepresented her publication and conference record.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

Finally, the AAO notes that the petitioner is currently in the United States pursuant to an H1B nonimmigrant petition filed by the International Association of Chinese Medical Specialists and Psychologists. If the previous nonimmigrant petition was approved based on the same fraudulent documentation that is contained in the current record, the approval would constitute material and gross error on the part of the director. The director is instructed to review the previous nonimmigrant approval for possible revocation, pursuant to 8 C.F.R. § 214.2(h)(11).

ORDER: The appeal is dismissed.

FURTHER ORDER: The AAO finds that the petitioner knowingly submitted documents containing false statements in an effort to mislead CIS and the AAO on an element material to the beneficiary's eligibility for a benefit sought under the immigration laws of the United States.